

### **REMARKS**

Claims 24 and 29 have been amended. Claims 24, 29-41, 43, and 45 have been cancelled without prejudice. Claims 25 and 30 were previously cancelled. Accordingly, claims 1-23, 26-28, 42, and 44 are currently pending in this application.

### **DOUBLE PATENTING**

Claims 1-30 and 42-45 stand provisionally rejected under the judicially created doctrine of obviousness-type double patenting over claims 1-89 of co-pending Application No. 09/943,187 to Campbell et al. Application No. 09/943,187 has been allowed. Pursuant to the Examiner's request, a Terminal Disclaimer complying with 37 C.F.R. 1.321(c) is being filed concurrently with this Amendment. Accordingly, Applicant respectfully requests the withdrawal of this rejection.

Claims 1-30 and 42-45 further stand provisionally rejected under the judicially created doctrine of obviousness-type double patenting over claims 1-33 of co-pending Application No. 09/943,199 to Campbell et al. Application No. 09/943,199 is still pending as of the date of this Amendment. Since this is a provisional rejection and the claims of the '199 application may change, a terminal disclaimer is not being filed at this time. If needed, one will be filed later.

### **35 U.S.C. § 102 REJECTIONS**

Claims 1-6, 11-16, 20, 23-24, and 26-29 stand rejected under 35 U.S.C. §102(e) as being anticipated by U.S. Patent No. 6,638,820 to Moore ("Moore"). Applicant respectfully traverses this rejection.

The earliest effective date of the Moore reference is February 8, 2001. However, the subject matter of claims 1-6, 11-16, 20, 23-24, and 26-29 was conceived and

actually reduced to practice prior to February 8, 2001. Rule 131 Declarations from the inventors attesting to this are attached. The Declarations establish conception of the claimed invention prior to the February 8, 2001, in addition to actual reduction to practice prior to February 8, 2001. *See* M.P.E.P. §715.07. "A rejection based on 35 U.S.C. 102(e) can be overcome by . . . [f]iling an affidavit or declaration under 37 C.F.R. §1.131 showing prior invention." M.P.E.P §706.02(b). Accordingly, Moore is not a proper reference and this rejection should be withdrawn.

Further, Applicants respectfully submits that Moore is silent about "said second thickness being less than, but not within 50% of a transition thickness of said metal comprising layer, said transition thickness being a thickness of said metal layer which, when diffused into said chalcogenide comprising material, transforms said chalcogenide comprising material from an amorphous to a crystalline state;" as recited by amended independent claims 16 and 27. Moore is also silent about "said second thickness being less than, but not within 10% of a transition thickness of said metal comprising layer," as recited by independent claims 1 and 13. Therefore, Moore does not anticipate any of the pending claims

Application No.: 09/943,190  
Amendment dated September 15, 2004  
Reply to Office action dated June 15, 2004

Docket No.: M4065.0698/P698

In view of the above, each of the presently pending claims in this application is believed to be in immediate condition for allowance. Accordingly, the Examiner is respectfully requested to pass this application to issue.

Dated: September 15, 2004

Respectfully submitted,

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**Attachments**